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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/350,983	07/09/1999	MARC PORAT	040180-0002	9089

24341 7590 02/27/2007  
MORGAN, LEWIS & BOCKIUS, LLP.  
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PALO ALTO, CA 94306

EXAMINER
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PATEL, JAGDISH

ART UNIT	PAPER NUMBER
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3693

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/350,983

Applicant(s)

PORAT ET AL.

Examiner

JAGDISH PATEL

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 74 and 75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 74 is/are rejected.
- 7) ☒ Claim(s) 75 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is in response to amendment filed 11/31/06.

#### ***Response to Amendment***

2. Claims 1-73 and 76-116 have been cancelled. Claims 74-75 are currently pending.

The examiner has contacted Att. Dr. Beyers on 2/9/07 and indicated that dependent claim 75 would be allowable if written in independent form. Although, the examiner has indicated allowability of claims 74-75, it was determined based upon further evaluation that the prior art of record (Pat. 6647373) does meet limitations of independent claim 74 thought to render the claim allowable. Therefore independent claim 74 is not deemed allowable over the prior art, however, dependent claim 75 would be allowed if written in independent form.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 74 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Carlton-Foss (US 6,647,373).

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Regarding claim 74 : Carlton-Foss teaches a fully automated method of facilitating an electronic auction between a prospective buyer and a plurality of prospective sellers with near perfect information, comprising the steps of:

- a) inputting into a computer a buyer's request for offer;  
(col. 3 L 20-23 "posting means for posting information across the network, the request being descriptive of a request" and col. 7 L 34-51 "request data received at a first input/output interface..")
- b) communicating the request for an offer to at least two of the sellers;  
(col. 3 L 23-27, "bidding means available to bidders ..in response to the request)
- c) receiving offers, including terms of sale in response to the request, from at least two of the sellers;  
(col. 3 L 30-31 ..receiving means for receiving the plurality of bids sent ..by plurality of proposers)
- d) automatically generating rating information about seller offers based on a plurality of predetermined criteria, wherein said plurality of criteria include at least one criterion other than price;  
(col. 3 L 34-37, "evaluation means for ranking bids received in accordance with financial and an unspecified number of other qualitative and quantitative dimensions", col. 8 L 1-14, see "function of bid item evaluator" and "bid ranking manager 134", see col. 10 description of Fig. 11, other citation of automatic rating of offer is col. 11 L 55+ which refers to an algorithm for automatic evaluation (rating of the offers)), for further details about rating of offers also refer to Fig. 12b)
- e) communicating information regarding at least some of the seller offers to at least one other seller;  
(col. 6 L 10-26, "authorized bidders are able to view selected parts of the bids and responds with revised proposals)
- f) receiving an adjusted offer from at least one of the sellers during a specified auction period;  
(see analysis step h) noting that a specified auction period is inherent to any auction)
- g) communicating information regarding at least some of the seller offers and at least part of the rating information to the buyer, wherein a software process initiates the communicating of seller offers and rating information to the buyer when a buyer-specified event occurs. (col. 6 L 42-50, ..displayed on requestor's worksheet.. and col. 12 L 52-58, requestor..review the results of the automated evaluations, col. 6 L 56+ after closing of the bid process, the ratings of the bids (including the corresponding ratings) are communicated to the "maker of the request" (i.e. the requestor or buyer soliciting offers from the sellers).

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*Allowable Subject Matter*

5. Claim 75 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reason for Allowance: Prior art of record fails to teach or suggest a method of facilitating auction in which a software process initiates communication of seller offers and rating information about the seller offers to the buyer when a seller offer with a rating above a buyer-specified rating level is received.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-630PM Mon-Tue and Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **KRAMER JAMES A** can be reached on **(571)272-6783**. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jagdish N. Patel

(Primary Examiner, AU 3693)

2/21/07

*β.*